IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.6.2006

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
and
THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

T.C.Nos.1096 to 1100 of 2006

Commissioner of Income Tax
Salem. .. Appellant in all appeals

Vs.

M/s. Sengunthar Thirumana Mandapam
4th Ward, Tharamangalam
Omalur Taluk
Salem District 636 502. .. Respondent in all appeals

Tax Case appeals filed against the order dated 27.9.2004 made in ITA Nos.1198, 1199, 1200, 1201 and 1202/Mds/2003 on the file Income-tax Appellate Tribunal, D-Bench, Chennai. Assessment year 1994-95, 1995-96, 1996-97, 1997-98, 1998-99 against the order of the Commissioner of Income Tax (Appeals) Salem dated 18.03.2003 made in ITA NOS. 128 to 137/02-03. against the order of the Deputy Commissioner of Income Tax Circle - II, Salem dated 27.03.2002 made in PAN/G.I.R. NO. 2 DAS 0036 for the Assessment years 1994-95 to 1998-99

For Appellant : Mr.N.Murali Kumaran, Sr.S.C.

WEB COPY

J U D G M E N T

(Delivered by P.D.DINAKARAN,J.)

As against the order of the Tribunal dated 27.9.2004 made in ITA Nos.1198, 1199, 1200, 1201 and 1202/Mds/2003, the revenue has preferred these appeals, raising the following substantial question of law.

https://hcservices.ecourts.gov.in/hcservices/

"Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the assessee society was entitled to exemption u/s. 11 of the Income Tax Act merely on the ground that the registration u/s.12AA has been granted with effect from 1.4.1990, without noticing that no charitable activities have been conducted and the income from the letting out of Kalyana Mandapam assessable under the head business has not been applied for any charitable purposes like education or any other object of general public utility?"

2.1. The assessee is a Society registered under the Tamil Nadu Societies Registration Act. The relevant assessment years are 1994-95, 1995-96, 1996-97, 1997-98 and 1998-1999 respectively. Admittedly, the Society was allotted a land by the Collector of Salem District in his proceedings in R.Dis.No.274700/83 dated 23.12.1984 on specific condition that the land should be used for Kalyana Mandapam. As per the guidelines given by the Collector, the assessee should build Kalyana Mandapam and it should function for the benefit of local people, mainly weavers and agriculturists. Any infringement of the above condition would enable the Collector to take over the land along with the building. The grant also provides to charge a very nominal rent for the building to meet out maintenance, repairs and renovation expenses. Accordingly, the assessee was running a Kalyana Mandapam and collecting minimum nominal charges from the users.

2.2. That apart, the assessee also started receiving voluntary donations from the accounting year 1989-90. Since the assessee did not file the return for the assessment year 1990-91 to 1999-2000, the assessing officer had reasonably believed that the income of the assessee was liable to be taxed. As the same was escaped for assessment on account of the failure on the part of the assessee to file return of income under Section 139 of the Act, a notice was issued to the assessee under Section 148 of the Act for the assessment years 1990-91 to 1997-98, since the assessee itself admitted the income for the assessment year 1998-99 and 1999-2000, as income from the business, which was also accepted under Section 143(1)(a) of the Act. Therefore, the assessing officer issued notice under Section 148 of the Act. However, the assessee filed nil returns for all the years on 30.3.2001.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

2.3. According to the assessee Society, it is a registered one established for charitable purpose and its income was exempted under Section 11/12 of the Act. But, the revenue rejected the explanation of the assessee on the sole ground that the assessee itself had admitted the income for the assessment years 1998-99 and 1999-2000 as income from business without claiming any exemption. The assessing officer further found that even though the object of the association was to construct a Kalyana Mandapam for the benefit of local people, upliftment of the poor, education and other social and charitable activities, the assessee had not undertaken any charitable activity since its inception except constructing and running a marriage hall, which is purely a commercial activity and do not have any charity involved in the activity and therefore, computed the income for the said assessment years as follows:

Assessment Year	Income Assessed
1990-91	59,960
1991-92	1,81,990
1992-93	1,46,430
1993-94	66,810
1994-95	1,01,020
1995-96	56,090
1996-97	1,53,060
1997-98	4,00,250
1998-99	1,03,360
1999-2000	10,800

2.4. Against the order of the assessing officer, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals). The Commissioner held that letting out of the marriage hall by the assessee would not lose the benefit of exemption. That apart, the Commissioner, applying the ratio laid down in ADDL. CIT v. SURAT ART SILK CLOTH MANUFACTURERS ASSOCIATION (121 ITR 1) wherein it is held that it is sufficient to take into consideration the dominant and primary object of the Trust to decide its character whether it is for charitable purpose or not, allowed the appeals preferred by the assessee and granted exemption under Sections 11 and 12AA of the Act, which was confirmed by the Income Tax Appellate Tribunal, on appeal at the instance of the revenue. Hence, the above appeals.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

3. The learned Standing Counsel appearing for the revenue, placing strong reliance on the decision of this Court in CIT v. HALAI NEMON ASSOCIATION (243 ITR 439) contends that exemption for income of the charitable trust under Sections 11 and 12AA of the Act cannot be granted automatically inasmuch as each transaction has to be looked into to decide whether the income earned was assessable as business income or otherwise. It is his further contention that the assessing officer had given a clear finding that the assessee had not undertaken any charitable activity since its inception, except constructing a marriage hall and letting for rent and that there was no charity involved in the same, which finding has not been either traversed or reversed by the Commissioner or by the Tribunal with convincing reasons.

4. We are unable to accept the above contentions of the learned Standing Counsel.

5. On facts, both the Commissioner as well as the Tribunal have rendered a clear finding based on the admitted facts of the case that the land was given by the Collector of Salem District to the assessee to construct Kalyana Mandapam on specific condition that it should function for the benefit of local people, mainly weavers and agriculturists. The grant also provides for collecting nominal rent for the building to meet out maintenance, repairs and renovation expenses. It is not in dispute that the assessee used to let out Kalyana Mandapam for social and charitable activities collecting nominal rent. Based on these undisputed facts, the Commissioner and the Tribunal rendered a concurrent finding that the very activity of constructing the Kalyana Mandapam and letting out to the local people, mainly weavers and agriculturists, satisfied the charitable object, even though the assessee had not diverted the accumulated fund for any other charitable purpose, viz. for the upliftment of the poor, education and other social and charitable activities.

6. In our considered opinion, the failure or non-diversion of the accumulated funds for any other charitable purpose, as referred to above, by itself, would not divest the right conferred on the assessee to claim exemption under Sections 11 and 12AA of the Act, for the simple reason that the activity of constructing Kalyana Mandapam and letting out the same after collecting nominal rent to meet maintenance, repairs and renovation expenses, sufficiently satisfies the object, viz. the benefit of local people, mainly weavers and agriculturists, which is a

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

condition under the grant given by the Collector and failure to comply with the said condition would enable the Collector to take over the building along with the land.

7. That apart, the assessee had applied for registration as required under Section 12AA on 31.12.1999 and the registration was given with retrospective effect from 1.4.1990 by the competent authority by order dated 2.8.2002, placing reliance on the CBDT circular 762 dated 18.2.1998 which came into effect from 1.4.1997 inserted by Finance Act 2/96, enabling the Chief Commissioner or Commissioner to satisfy himself about the genuineness of the Trust or Institution and to grant registration, by exercising such power conferred under Section 12AA of the Act. The above fact cannot be lightly disregarded under the facts and circumstances of the case, inasmuch as the same has got persuasive effect to the case of the assessee.

8. Therefore, in view of the above concurrent finding of the Commissioner that the construction of Kalyana Mandapam and letting out itself is a charitable activity, the decision rendered by this Court in CIT v. HALAI NEMON ASSOCIATION (243 ITR 439) has no application to the facts of the case.

9. On the other hand, this Court, in CIT v. SAMYUKTHA GOWDA SARASWATHA SABHA (245 ITR 242), held that letting out of the Kalyana Mandapam, even though was not one of the object of the assessee, but an activity carried on to fulfil the object of the Trust and the income earned by the Trust by such activity cannot be construed as its business income, but its property income and therefore, the same is entitled to be exempted under Section 11 of the Act. But the case on hand is more stronger than the case in CIT v. SAMYUKTHA GOWDA SARASWATHA SABHA (245 ITR 242).

10. This Court in the assessee's own case decided the similar issue in favour of the assessee vide order dated 28.02.2006 in T.C.Nos.252 to 256 of 2006, reported in 283 ITR 355.

11. In view of the admitted fact that the main object of the Trust itself is to construct Kalyana Mandapam for the benefit of the local people, mainly weavers and agriculturists, the land was also granted by the District Collector, Salem, to achieve the said object, viz. for the benefit of local people, upliftment of the poor, education and other social and charitable activities, which is one of the dominant and primary object of the Trust. As per the ratio laid down in ADDL. CIT v. SURAT ART SILK CLOTH

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

MANUFACTURERS ASSOCIATION (121 ITR 1), the assessee satisfies the dominant and primary object of the Trust by putting up construction and letting the same by collecting nominal rent, which would not defeat the right of exemption under Section 11 of the Act, merely on account of the fact that the accumulated funds had not been spent for other charitable activities, viz. for upliftment of the poor, education and other social activities, which was wrongly weighed by the assessing officer that the Trust had not undertaken any charitable activity since its inception.

12. We also add that the mere fact that the assessee submitted return for the assessment years 1998-99 and 1999-2000 admitting the income as business income will not take away the rights of the assessee to claim the benefit of exemption, as there cannot be any estoppel against Section 11 of the Act, for the simple reason that the revenue has not raised any question of law in that regard.

For all these reasons, we do not find any substantial question of law arising for consideration and accordingly, the appeals are dismissed. Consequently, TCMP Nos.1568 to 1572 of 2006 are also dismissed.

ATR

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. THE ASSISTANT REGISTRAR
INCOME TAX APPELLATE TRIBUNAL
III RD FLOOR, RAJAJI BHAVAN
BESANT NAGAR
MADRAS 600 090

2. THE COMMISSIONER OF INCOME
TAX (APPPEALS) SALEM

3. THE INCOME TAX APPELLATE
TRIBUNAL D BENCH, CHENNAI

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

4. THE DEPUTY COMMISSIONER
OF INCOME TAX CIRCLE II SALEM

5. THE COMMISSIONER OF
INCOME TAX SALEM

+ 5 cc to Mr. N. Muralikumaran Senior Standing Counsel for Income Tax sr nos. 27287 to 27291

PV(CO)
NM(25.07.2006)

T.C.Nos.1096 to 1100 of 2006.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/